

MINUTES

COAL SURFACE MINING RECLAMATION FUND ADVISORY BOARD

Conference Room 211

February 3, 2011

10:00 a.m.

Present

Gavin Bledsoe
Jackie Davis
John "Kelly" Gilmer, Jr.
Charles Hale
Scotty Rose

Absent

Phil Mullins

Also Present

Bradley Lambert
Sandy Smith

A meeting of the Coal Surface Mining Reclamation Fund Advisory Board was held on February 3, 2011 at 10:00 a.m. at the Department of Mines, Minerals and Energy (DMME) Office in Big Stone Gap.

Jackie Davis opened the meeting. A motion was made to approve the minutes of the July 8, 2010 meeting. The minutes were unanimously approved.

Mr. Davis welcomed a new Board member, Charles Hale, Jr. Mr. Hale was self introduced to the Board members.

The Board unanimously approved issuing a certificate or plaque for appreciation of service by Paul Ison. Mr. Ison served on the Reclamation Fund Advisory Board for more than eight years.

A nomination was made for Phil Mullins to serve as the Board Chairperson. The Board unanimously approved the nomination.

Summary copies of the Pool Bond Fund Financial Report were distributed and discussed. There have been no disbursements from the Fund and there are no pending liabilities. The balance of the Fund as of December 31, 2010 is \$7,194,730.47.

A recommendation of action on self bonding in the Pool Bond Fund was mentioned at the last meeting (July 8, 2010) with further discussion of a legislative change to follow at the next scheduled meeting.

The Board had a lengthy discussion concerning the self bonding process, bond forfeiture liabilities, and qualifications for acceptance in the Fund. Bankruptcy of self bonding companies was discussed. If a company that is self bonded files for bankruptcy, the money would first be taken out of the Fund to reclaim the site and take care of any immediate environmental impacts to health and safety issues. The Division would go to court to try and recover the money taken from the Fund.

The Board discussed the possibility of eliminating self bonding from the bonding mechanisms. It was noted that any changes to the self bonding provisions under Part 4VAC25-130-801 would require a legislative change recommendation from the Board. A motion was made to proceed before the General Assembly to have the bonding system modified to eliminate the self bonding statute. The Board unanimously approved the motion.

The potential is to have a proposal to eliminate self bonding in place by July 1, 2012. The proposed change of the new regulation should be ready by August 1, 2011. The Board's recommendation to eliminate the self bonding statute would be sent to the DMME Director. After the proposal is complete, the Board will reconvene to review the proposal for changes/comments. Sometime between August and December, a Board member will introduce the proposed legislation and will testify that this is the recommendation of the Board. If the Statute is amended per the recommendation, then the regulation revision process would have to go through the Virginia Administrative Process Act to become effective. The change would also go through the federal review of state regulatory amendments. This process could take up to two years.

§45.1-270.4:1 – Special Assessment Statute was discussed. This Statute could be repealed since what is required has already occurred and there is no language in this section to provide for future special assessments. A determination was made to “table” the decision to seek repeal of this Statute until conferring with the Attorney General about the best way to handle the repeal. A report will be made at the next scheduled meeting.

Acid mine drainage (AMD) from coal mining is a problem in some states. Pennsylvania implemented an alternative bonding system for perpetual care of potential AMD sites. The Office of Surface Mining (OSM) has been advised by Virginia that if there is a potential for AMD at a mine site, the Division of Mined Land Reclamation (DMLR) will not issue a permit. OSM contends that by not having a bonding mechanism to address AMD, a deficiency of the State program may be present and it will issue a 732 Letter. A 732 Letter is a section of the Federal Regulations that would instruct DMLR to implement the perpetual bonding instrument or OSM would take over that portion of the program. If OSM provides a 732 Letter, DMLR will review it and respond accordingly. There was a lengthy discussion of perpetual care – the cost, difficulties for smaller operators, etc. This will be an ongoing issue with OSM. Updates will be provided to the Board.

DMLR continues to have potential challenges in permitting and with Total Maximum Daily Loads and the interagency permit coordination issues. With the Corps of Engineers' (COE) determination of jurisdictional waters and the potential impact with the Environmental Protection Agency (EPA), no permits that have fills associated with them have been approved in the last 18 months. The EPA and COE keep changing the rules. It is expected that these challenges will be decided in Federal Court.

OSM has notified DMLR that it is going to do a Focus Review of the Pool Bond Fund this year. OSM is conducting a national campaign to review the reclamation fund of every coal producing state that has its own alternative or Pool Bond Fund.

A copy of the OSM report on “Adequacy of Virginia Bond Amounts, A National Priority Oversight Evaluation” was distributed to Board members and discussed. OSM does not believe DMLR's bonds are adequate, but provides no supporting arguments as to why it believes the bonds are inadequate.

A recommendation was made for DMLR to do an integrity review of the Pool Bond Fund to see if it's adequate or if legislative changes need to be made. There is a risk in doing the integrity review. There are potential impacts to operators if the report should show the bonds are inadequate.

DMLR will write a scope of work for the review of the Pool Bond Fund. There was a lengthy discussion of the necessary information to be included in the scope of work. The finalized scope of work will be shared with the Board at the next meeting for approval/comments.

After the scope is written and reviewed by the Board, it will be reviewed by DMLR's internal auditor and financial services. If approved, a Request for Proposal will be published to get a bid on the cost of the review. DMLR would be responsible for the expenditures.

The Board unanimously approved having the integrity review done. It will take approximately 60 days to have the scope of work completed. The RFP would be submitted, bids evaluated, and decisions made. The entire process would take approximately 90 days.

A meeting was scheduled for May 3, 2011. There being no further discussions, the meeting was adjourned.